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Motorola, Inc. Law Department 1303 East Algonquin Road 3rd Floor Schaumburg, IL 60196			EXAMINER SALTARELLI, DOMINIC D	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing.US@motorola.com

<b>Office Action Summary</b>	<b>Application No.</b> 09/353,583	<b>Applicant(s)</b> REICHGOTT ET AL.	
	<b>Examiner</b> DOMINIC D. SALTARELLI	<b>Art Unit</b> 2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 24-44 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15, 17, 24-34 and 36-44 is/are rejected.
- 7) ☒ Claim(s) 16 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed November 21, 2008 have been fully considered but they are not persuasive.

Applicant first argues that "Contrary to the assertion of the Office Action, Banker never teaches a out-of-band control message "indicating a specified in-band channel" on which to receive a "download of data or programming offered to said set-top terminal over said cable network.", arguing that Banker only teaches tuning among out of band channels (applicant's remarks, pages 14-16).

In response, the cited portion of Banker (col. 2, lines 55-68) states that out of band terminals receive addressed and global command messages over a single data carrier (in the example given, this single out of band channel is 108.2 MHz). Thus, according to the disclosure of Banker, there is but a single out of band channel over which addressed commands (not the data to which the commands point to) are received by out of band receivers. Subsequent to this portion, the rest of the disclosure which describes the transmission and reception of the data itself (such as barker screens), are specifically disclosed as being on in-band channels (col. 2 line 55 - col. 3 line 20). Thus, given that Banker explicitly discloses receiving addressed commands over an out of band channel and also explicitly discloses receiving the data content itself over in-band channels, it is clear that the last section cited (col. 8, lines 10-47), which teaches receiving an addressed command which includes instructions on which channel a

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receiver should tune to, meets the claimed limitations in question. For out of band receivers, the addressed commands are received on the lone out of band data carrier, and these addressed commands include tuning instructions which instruct the receiver to tune to an in-band channel to receive the needed data content (see for example, col. 9, lines 15-46).

Second, applicant argues that Diehl does not disclose using “time of day” as a criterion for downloading data that is indicative of subscriber convenience (applicant’s remarks, page 17).

In response, Diehl specifically states that the time of day criterion used to activate decoder for receiving data is set for a nighttime hour (col. 1, lines 50-63), a time at which users less likely to be using their receivers for watching programming (namely, they are more likely to be asleep), and is thus indicative of subscriber convenience as such an hour is less likely to interrupt the viewing of content due to being an off-peak hour.

Lastly, applicant argues that Bisdikian does not disclose the use of a deadline as claimed, alleging the examiner has misapplied the reference in an attempt to meet claim limitations, as Bisdikian teaches a data carousel which specifies the points in time at which particular sets of data are available (applicant’s remarks, page 19).

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In response, while there may be a difference between what is taught by Bisdikian and the common meaning of the term 'deadline', the examiner was forced to apply such a read due to the manner in which applicant's own originally filed specification defines the term 'deadline'. Ordinarily, applying the term 'deadline' would specify that after the deadline was passed, data would no longer be available for download. However, in the specification, the applicant defines a deadline as a point in time at which data is automatically downloaded by a receiver (applicant's specification, page 11, lines 3-17), and further, applicants define a deadline as something that can be deferred by the receiver if the receiver is currently busy (applicant's specification, page 11, lines 18-32). Thus it was necessary to apply a reference like Bisdikian, who teaches a carousel where particular sets of data are only available at particular times (said particular times being the 'deadline', where deferring the deadline means waiting until the data is available on the carousel again), in order to conform with applicant's definition of 'deadline' as a point in time at which data is downloaded, said point in time being deferrable by the receiver if the receiver is busy.

Regarding the official notice taken that many technologies exists which serve to detect commercials, the applicant did not specifically traverse said assertion, and is thus taken as an admission of the fact herein. See MPEP 2144.03.

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***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6, 9-15, 17, 24-27, 29-34, 36-38, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz et al. (5,666,293, of record) [Metz] in view of Banker et al. (5,247,364, of record) [Banker].

Regarding claims 1, 24, 27, and 36, Metz discloses a set-top terminal for connecting a subscriber to a cable network (fig. 1, set-top 100), said terminal comprising:

a processor (fig. 6, micro-processor 110); and

a memory unit (fig. 6, system memory 120),

wherein said processor only accepts downloads on a specified in-band channel (channel 0, col. 8, lines 26-40) and records said download in said memory unit (col. 9 line 65 - col. 10 line 12 and col. 37 line 60 - col. 38 line 52) when one or more predetermined criteria are satisfied, and wherein said criteria when satisfied indicates that acceptance of said download will cause a minimum of interference with said subscriber's use of said set-top terminal (upgrade occurs during a power down state or at the behest of the user, col. 9, lines 20-38 and col. 35, lines 5-29); and

terminating execution of existing programming and commencing execution of said upgraded programming only when the predetermined criteria are satisfied (col. 9 line 65 - col. 10 line 12 and col. 38, lines 6-38).

Metz fails to disclose the processor monitors an out-of-band control channel of the cable network for information indicating that a download of data or programming is available and indicating a specified in-band channel for receiving the download of data or programming offered to said set-top terminal over said cable network.

In an analogous art, Banker discloses a cable network system for transmitting messages to set-top terminals wherein a set-top terminal processor monitors an out-of-band control channel of the cable network for information indicating that a download of data is available and indicating a specified in-band channel for receiving the download of data or programming offered to said set-top terminal over said cable network (messages, which are received via a dedicated out of band channel, col. 2, lines 55-68, control the set-top to automatically tune to a specified in-band channel to receive data which is addressed to the terminal, col. 8, lines 10-47), allowing a set-top to be alerted to available data regardless of which channel the set-top is tuned to (col. 2, lines 55-68).

It would have been obvious at the time to a person of ordinary skill in the art to modify the set-top terminal of Metz to include monitoring an out-of-band control channel of the cable network for information indicating that a download of

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data or programming is available and indicating a specified in-band channel for receiving the download of data or programming offered to said set-top terminal over said cable network, as taught by Banker.

The system proposed by Metz suffers from a serious drawback in the form of relying upon a fixed channel for data downloads (namely, channel 0, col. 8, lines 26-32), which must be periodically monitored by the set top (either automatically or manually, col. 9, line 20-30), just to see if an update or application is even available (col. 9, lines 56-64). Further, this limitation becomes pronounced once the proliferation of software versions and number of applications available for download increases due to the number of supported service providers (col. 8, lines 41-64; col. 20, lines 32-42; col. 24, lines 50-63; and col. 35, lines 54-65), which would drastically increase the amount of time that the fixed channel must be monitored and tuned to in order to receive specified data (col. 37, lines 36-43). Therefore, the targeted messaging method proposed by Banker would provide an immediate benefit to the system disclosed by Metz by removing the need to dedicate a single in-band channel exclusively to a data carousel of indeterminate size and only requiring the set-top to check the in-band channel when data is actually available, regardless of which channel the set-top is tuned to.

Regarding claims 2 and 25, Metz and Banker disclose the set-top terminal of claims 1 and 24, wherein the criteria are downloaded to said set-top terminal



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over said cable network (Metz teaches the criteria are part of the operating system, col. 8, lines 9-25, which is downloaded to the set-top, col. 8, lines 33-40).

Regarding claims 3 and 26, Metz and Banker disclose the set-top terminal of claims 1 and 24, wherein the set-top terminal verifies that said data or programming offered as said download is not already resident in said memory (Metz, col. 9, lines 56-64).

Regarding claim 4, Metz and Banker disclose the set-top terminal of claim 1, wherein said set-top terminal verifies that said data or programming offered as said download is specified as being intended for a class of terminals to which said set-top belongs (Metz teaches the type of set-top is also a consideration, col. 8, lines 41-45; col. 9, lines 56-64; and col. 36, lines 17-41).

Regarding claims 6, 29, and 37, Metz and Banker disclose the set-top terminal of claims 1, 27, and 36, wherein said criteria include whether said set-top terminal is turned off (Metz, col. 9, lines 20-30)

Regarding claims 9 and 30, Metz and Banker disclose the set-top terminal of claims 1 and 24, wherein said set-top terminal signals said subscriber that said download is available and requests permission to accept said download, said one or more criteria including a positive response by said subscriber to said

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request for permission to accept said download (Metz discloses a menu option for initiating the download manually, col. 9, lines 20-30, wherein when modified in view of Banker, said menu option is a prompt to the user, Banker, col. 8, lines 10-47).

Regarding claims 10 and 31, Metz and Banker disclose the set-top terminal of claims 1 and 24, wherein said set-top terminal tunes to said specified in-band channel to receive said download if said one or more criteria are satisfied (Metz, col. 9, lines 20-30, wherein the satisfaction of the criteria initiates the download, which involves tuning to the specified channel, Banker, col. 8, lines 10-47).

Regarding claims 11 and 33, Metz and Banker disclose the set-top terminal of claims 1 and 24, wherein if said criteria are satisfied, said processor erases information in said memory unit and replaces said erased information with data from said download (Metz, col. 9 line 65 - col. 10 line 12 and col. 38, lines 6-38).

Regarding claim 12, Metz and Banker disclose the set-top terminal of claim 1, wherein following said download of programming, said processor will only execute newly-received programming from said download when one or more predetermined criteria are satisfied (Metz, col. 10, lines 9-12).

Regarding claims 13, 14, and 32, Metz and Banker disclose the set-top terminal of claims 1 and 24, wherein prior to accepting said download, said processor determines whether any programming is stored in said memory which is not being executed, but which is identified as being a later version than programming being executed by said processor at that time, if said processor locates any such later version of programming in memory, said processor will terminate execution of the programming being executed, erase said terminated programming from memory and reset so as to execute said later version of said programming (Metz, col. 38, lines 6-19).

Regarding claims 15, 17, and 34, Metz and Banker disclose the set-top terminal of claims 1 and 24, wherein said memory unit is logically partitioned into two sections, a first section for containing programming being executed by said processor and a second section for receiving and storing programming from said download (Metz uses RAM for receiving programming from said download and NVRAM for containing programming being executed, which are both logically and physically separate, col. 38, lines 39-52).

Regarding claim 38, Metz and Banker disclose the method of claim 36, but fail to disclose the criteria include detection of a commercial break in television programming being received by said set-top terminal.

Examiner takes official notice that many technologies exist which serve to detect commercials, as viewers are often uninterested in such and often consider them an annoyance. These technologies are used in conjunction with some form of commercial blocking method, such as muting the commercial or stopping the recording of a programming to eliminate the commercial from the program, as such it is notoriously well known that viewers are often uninterested in commercial breaks and are not paying much attention when they occur.

Therefore, it would have been obvious at the time to a person of ordinary skill in the art to modify the method of Metz and Banker to include detection of a commercial break in television programming being received by said set-top terminal, as interrupting a commercial to download programming would likely have little impact on the interest of a viewer, who sees the commercial itself as an interruption of the broadcast programming.

Regarding claim 41, Metz discloses a set-top terminal for connecting a subscriber to a cable network (fig. 1, set-top 100), said terminal comprising:

a processor unit comprising a first processor (fig. 6, digital A/V processor 125) and a second processor (fig. 6, micro-processor 110); and

a memory unit (fig. 6, system memory 120);

wherein said first processor is dedicated to providing a user interface (digital A/V processor 125 includes the graphics overlay control which provides non-broadcast user services, such as on screen displays and menus, col. 18,

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lines 45-67 and ) and said second processor is dedicated to managing a download of data or programming offered to said set-top terminal over said cable network through a specified in-band channel (col. 30, lines 15-34) such that said first processor can maintain said user interface including user services while said second processor manages the download (the microprocessor performs the download while the graphics overlay control provides an on screen graphic for display, col. 38 line 62 - col. 39 line 6).

Metz fails to disclose monitoring an out-of-band channel for information indicating that a download of data or programming is available, indicating a specified in-band channel for receiving the download.

In an analogous art, Banker discloses a cable network system for transmitting messages to set-top terminals wherein a set-top terminal processor monitors an out-of-band control channel of the cable network for information indicating that a download of data is available and indicating a specified in-band channel for receiving the download of data or programming offered to said set-top terminal over said cable network (messages, which are received via a dedicated out of band channel, col. 2, lines 55-68, control the set-top to automatically tune to a specified in-band channel to receive data which is addressed to the terminal, col. 8, lines 10-47), allowing a set-top to be alerted to available data regardless of which channel the set-top is tuned to (col. 2, lines 55-68).

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It would have been obvious at the time to a person of ordinary skill in the art to modify the set-top terminal of Metz to include monitoring an out-of-band control channel of the cable network for information indicating that a download of data or programming is available and indicating a specified in-band channel for receiving the download of data or programming offered to said set-top terminal over said cable network, as taught by Banker.

The system proposed by Metz suffers from a serious drawback in the form of relying upon a fixed channel for data downloads (namely, channel 0, col. 8, lines 26-32), which must be periodically monitored by the set top (either automatically or manually, col. 9, line 20-30), just to see if an update or application is even available (col. 9, lines 56-64). Further, this limitation becomes pronounced once the proliferation of software versions and number of applications available for download increases due to the number of supported service providers (col. 8, lines 41-64; col. 20, lines 32-42; and col. 24, lines 50-63), which would drastically increase the amount of time that the fixed channel must be monitored and tuned to in order to receive specified data (col. 37, lines 36-43). Therefore, the targeted messaging method proposed by Banker would provide an immediate benefit to the system disclosed by Metz by removing the need to dedicate a single in-band channel exclusively to a data carousel of indeterminate size and only requiring the set-top to check the in-band channel when data is actually available, regardless of which channel the set-top is tuned to.

Regarding claim 42, Metz and Banker disclose the set top terminal of claim 1, wherein said programming is received in packets, said terminal being configured reassemble said packets into an executable object stored into non-volatile memory (Metz, col. 10, lines 25-46 and col. 16, lines 17-30).

4. Claims 5 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz and Banker as applied to claims 1 and 27 above, and further in view of Diehl et al. (5,373,557, of record) [Diehl].

Regarding claims 5 and 28, Metz and Banker disclose the set-top terminal of claims 1 and 27, but fail to disclose the criteria include a time of day.

In an analogous art, Diehl teaches informing a receiver of time of day limitations within which to access update data, taking advantage of off-peak hours to perform automated downloading of data (col. 1 line 50 - col. 2 line 17).

It would have been obvious at the time to a person of ordinary skill in the art to modify the set-top terminal of Metz and Banker to include informing a receiver of time of day limitations within which to access update data, taking advantage of off-peak hours to perform automated downloading of data, as taught by Diehl, as off-peak hours are when a user is least likely to be disturbed by the interruption.

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5. Claims 7, 8, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz and Banker as applied to claim 1 above, and further in view of Bisdikian et al. (6,047,317, of record) [Bisdikian].

Regarding claims 7 and 39, Metz and Banker disclose the set-top terminal of claims 1 and 36, but fail to disclose said one or more criteria include a deadline by which acceptance of said download is required by an operator of said cable network, said deadline being a specific point in time subsequent to an initial offering of said download of data or programming.

In an analogous art, Bisdikian discloses a data carousel wherein the receiver is provided with information which specifies a deadline for accepting information from the carousel, said deadline being a specific point in time subsequent to an initial offering of said download of data or programming (a receiver accesses a directory for a data carousel which indicates the content and position of data within the carousel, and if a receiver does not accept the data on its first pass, the deadline is missed and the receiver must wait until the data is rebroadcast in the carousel before being able to access it again, col. 3, lines 55-63).

It would have been obvious at the time to a person of ordinary skill in the art to modify the set-top terminal of Metz and Banker to include a deadline by which acceptance of said download is required by an operator of said cable network, said deadline being a specific point in time subsequent to an initial offering of said download of data or programming, as taught by Bisdikian. The



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purpose of said modification would further improve on the benefit to Metz that Banker suggests to one of ordinary skill in the art. Since Banker teaches alerting the set-top that data is available and on which channel, alleviating the need to constantly monitor a data channel, adding deadline information which indicates when the data will be available further reduces the time needed to download data from the carousel, as the set-top would then only tune to the specified channel at the specified time rather than tuning to the specified channel and waiting for the data to arrive.

Regarding claims 8 and 40, Metz, Banker, and Bisdikian disclose the set-top terminal of claims 7 and 39, wherein said set-top terminal defers said deadline if said set-top terminal is being used to provide a dedicated service including recording programming in conjunction with a video cassette recorder or providing pay-per-view programming (this is an inherent feature of the combination, because Metz teaches the download only takes place when the user either explicitly initiates the download or when the set-top unit is powered off, col. 9, lines 20-30, thus if the set-top is in use, the set-top will defer the deadline [the time at which the data is available on the carousel] until the set-top is no longer in use).

6. Claims 43 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metz in view of Banker and Bisdikian.

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Regarding claim 43, Metz discloses a set-top terminal for connecting a subscriber to a cable network (fig. 1, set-top 100), said terminal comprising:

a processor (fig. 6, micro-processor 110); and

a memory unit (fig. 6, system memory 120),

wherein said processor downloads data on a specified channel (channel 0, col. 8, lines 26-40) and records said download in said memory unit (col. 9 line 65 - col. 10 line 12 and col. 37 line 60 - col. 38 line 52) when one or more predetermined criteria are satisfied, and wherein said criteria when satisfied indicates that acceptance of said download will cause a minimum of interference with said subscriber's use of said set-top terminal (upgrade occurs during a power down state or at the behest of the user, col. 9, lines 20-38 and col. 35, lines 5-29).

Metz fails to disclose the processor monitors transmission over the cable network for information indicating that a download of data or programming is available and indicating a specified channel for receiving the download of data or programming offered to said set-top terminal over said cable network, and wherein said one or more criteria include a deadline by which acceptance of said download is required by an operator of said cable network, said deadline being a specific point in time subsequent to an initial offering of said download of data or programming.

In an analogous art, Banker discloses a cable network system for transmitting messages to set-top terminals wherein a set-top terminal processor

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monitors an out-of-band control channel of the cable network for information indicating that a download of data is available and indicating a specified in-band channel for receiving the download of data or programming offered to said set-top terminal over said cable network (messages, which are received via a dedicated out of band channel, col. 2, lines 55-68, control the set-top to automatically tune to a specified in-band channel to receive data which is addressed to the terminal, col. 8, lines 10-47), allowing a set-top to be alerted to available data regardless of which channel the set-top is tuned to (col. 2, lines 55-68).

It would have been obvious at the time to a person of ordinary skill in the art to modify the set-top terminal of Metz to include monitoring the cable network for information indicating that a download of data or programming is available and indicating a specified channel for receiving the download of data or programming offered to said set-top terminal over said cable network, as taught by Banker.

The system proposed by Metz suffers from a serious drawback in the form of relying upon a fixed channel for data downloads (namely, channel 0, col. 8, lines 26-32), which must be periodically monitored by the set top (either automatically or manually, col. 9, line 20-30), just to see if an update or application is even available (col. 9, lines 56-64). Further, this limitation becomes pronounced once the proliferation of software versions and number of applications available for download increases due to the number of supported

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service providers (col. 8, lines 41-64; col. 20, lines 32-42; col. 24, lines 50-63; and col. 35, lines 54-65), which would drastically increase the amount of time that the fixed channel must be monitored and tuned to in order to receive specified data (col. 37, lines 36-43). Therefore, the targeted messaging method proposed by Banker would provide an immediate benefit to the system disclosed by Metz by removing the need to dedicate a single in-band channel exclusively to a data carousel of indeterminate size and only requiring the set-top to check the in-band channel when data is actually available, regardless of which channel the set-top is tuned to.

Metz and Banker fail to disclose wherein said one or more criteria include a deadline by which acceptance of said download is required by an operator of said cable network, said deadline being a specific point in time subsequent to an initial offering of said download of data or programming.

In an analogous art, Bisdikian discloses a data carousel wherein the receiver is provided with information which specifies a deadline for accepting information from the carousel, said deadline being a specific point in time subsequent to an initial offering of said download of data or programming (a receiver accesses a directory for a data carousel which indicates the content and position of data within the carousel, and if a receiver does not accept the data on its first pass, the deadline is missed and the receiver must wait until the data is rebroadcast in the carousel before being able to access it again, col. 3, lines 55-63).

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It would have been obvious at the time to a person of ordinary skill in the art to modify the set-top terminal of Metz and Banker to include a deadline by which acceptance of said download is required by an operator of said cable network, said deadline being a specific point in time subsequent to an initial offering of said download of data or programming, as taught by Bisdikian. The purpose of said modification would further improve on the benefit to Metz that Banker suggests to one of ordinary skill in the art. Since Banker teaches alerting the set-top that data is available and on which channel, alleviating the need to constantly monitor a data channel, adding deadline information which indicates when the data will be available further reduces the time needed to download data from the carousel, as the set-top would then only tune to the specified channel at the specified time rather than tuning to the specified channel and waiting for the data to arrive.

Regarding claim 44, Metz, Banker, and Bisdikian disclose the set-top terminal of claim 43, wherein said set-top terminal defers said deadline if said set-top terminal is being used to provide a dedicated service including recording programming in conjunction with a video cassette recorder or providing pay-per-view programming (this is an inherent feature of the combination, because Metz teaches the download only takes place when the user either explicitly initiates the download or when the set-top unit is powered off, col. 9, lines 20-30, thus if the

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set-top is in use, the set-top will defer the deadline [the time at which the data is available on the carousel] until the set-top is no longer in use).

***Allowable Subject Matter***

7. Claims 16 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIC D. SALTARELLI whose telephone number is

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(571)272-7302. The examiner can normally be reached on Monday - Friday 9:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Dominic D Saltarelli/  
Examiner, Art Unit 2421